CLIENT ALERTS & INSIGHTS

No More Early Gatekeeping: Ninth Circuit Clarifies Timing for Trade Secret Identification Under DTSA

MARCH 31, 2026

Authors: J. Scott Humphrey, Charanjit Brahma, Quincie Cross, Gracie McElroy

Featured Practices: Trade Secrets, Restrictive Covenants & Unfair Competition, Intellectual Property

Key Takeaways

- Recent Ninth Circuit decisions clarify that, under the federal Defend Trade Secrets Act (DTSA), plaintiffs do not need to identify trade secrets with "sufficient particularity" before discovery begins-unlike California's stricter state law.
- This shift makes it easier for plaintiffs to pursue trade secret claims in federal court, while making it harder for defendants to dismiss vague claims early. As a result, businesses face increased litigation risk and may encounter broader, less-defined trade secret allegations.
- Plaintiffs can leverage the DTSA's procedural flexibility to develop claims during discovery, while defendants should focus on using discovery tools and protective orders to manage the scope of litigation and challenge trade secret definitions after discovery is complete.

Executive Summary

What used to be (and is) a longstanding tension in trade secret cases-when plaintiffs must identify misappropriated trade secrets-is heading closer to a bright-line rule, at least in the Ninth Circuit. Indeed, the Circuit's *Quintara Biosciences Inc. v. Ruifeng Biztech, Inc.*[1] and *Zunum Aero Inc. v. Boeing Co.*[2] decisions have reshaped trade secret litigation procedure under the federal Defend Trade Secrets Act (DTSA) and resolved the constant balance between plaintiffs seeking to learn all of the trade secrets misappropriated by the defendants and the defendants fear of broad, ambiguous claims and "fishing expeditions."

Specifically, these rulings clarify that plaintiffs are not required to identify trade secrets with "sufficient particularity" before discovery begins. This is a notable departure from California's Uniform Trade Secrets Act (CUTSA) which requires trade secret identification with "reasonable particularity" at the pleadings stage.

In the wake of these two rulings, plaintiffs and defendants may change strategy when alleging and defending trade secret misappropriation claims. First, plaintiffs now have more incentive to bring only DTSA claims in California federal courts and can bypass early disclosure hurdles and maximize on discovery to identify their trade secret claims. Second, defendants should avoid early procedural

strikes to trade secret claims because it is now harder to challenge vague trade secret claims early in litigation. Instead, defendants should utilize traditional discovery methods, such as protective orders, to manage discovery and expose insufficient trade secret claims.

Introduction

Trade secret litigation often hinges on the specificity with which a plaintiff defines the allegedly misappropriated secrets. However, under different statutes, *when* the plaintiff is required to provide that specificity can vary. On one hand, plaintiffs are generally concerned about being forced to identify the trade secrets in dispute before taking discovery from defendants because it is not always clear (or known) what, if any, information was actually taken and/or is being used. On the other hand, defendants are typically wary that failing to require plaintiffs to identify the allegedly misappropriated trade secrets with specificity will lead to fishing expeditions that allow a competitor access to their own secret products and processes.

While acknowledging these competing concerns in two recent rulings-*Zunum Aero, Inc. v. Boeing Co.* and *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*-the Ninth Circuit clarified that, unlike its California counterpart that requires a plaintiff to identify the trade secrets at issue with "reasonable particularity," the federal Defend Trade Secrets Act (DTSA) does not require specificity until the summary judgment stage or trial. As a result, the Ninth Circuit has pushed back against premature dismissals.

Although the debate continues whether there is a uniform standard of particularity in defining trade secrets, *Zunum* and *Quintara* signal a shift (at least in the Ninth Circuit) toward greater procedural flexibility for plaintiffs under the DTSA. Considering these decisions, plaintiffs should contemplate the procedural implications of bringing claims under either the DTSA, state statutes, or both. Defendants should also consider alternative means of containing discovery and limiting the scope of issues for trial.

Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.

Quintara involved claims of trade secret misappropriation between two DNA sequencing analysis companies. In the context of a dispute about the scope of plaintiff Quintara's discovery requests, defendant Ruifeng-at the district court's invitation-challenged whether the plaintiff had adequately described its trade secrets under Rule 12(f). The district court decided the issue by borrowing the California Uniform Trade Secrets Act's (CUTSA) requirement that the plaintiff identify the trade secrets with "reasonable particularity" before discovery commences. Applying that rule, the court struck nine of eleven trade secrets on which Quintara's DTSA claim was based-even while acknowledging that the "state procedure does not govern here"- in order to "nail down [Quintara's] asserted trade secrets . . . [and] permit [the court] to discern the reasonable bounds of discovery."

The Ninth Circuit noted that Quintara's document identifying its trade secrets was not a "pleading" subject to the requirements of Rule 12(f), and even if it was, nothing about the disclosure could be considered strikable as "pleading an insufficient defense or … redundant, immaterial, impertinent, or scandalous matter." Thus, the Ninth Circuit instead treated the district court's dismissal as a discovery sanction and found that the case-specific five-factor test for reviewing sanctions decisions for abuse of discretion will "rarely" support dismissal of DTSA claims as a discovery sanction. Instead, the Ninth Circuit reinforced its ruling in *Inteliclear*[3]

that under the DTSA, whether a plaintiff has identified its trade secret with "sufficient particularity" is a triable fact issue and clarified that the requirement from CUTSA that trade secrets be identified prior to discovery does not apply to DTSA claims. The Ninth Circuit then remanded the case for further proceedings and reopened the door for Quintara to pursue its full slate of trade secret claims.

Zunum Aero, Inc. v. Boeing Co.

Zunum was filed in the Western District of Washington and after an 8-day trial last year, the jury returned an $81 million verdict finding that Boeing had misappropriated 11 of 19 alleged trade secrets relating to electric and hybrid-electric aircraft technology under the Washington Uniform Trade Secrets Act.[4] Before trial, the district court had rejected Zunum's efforts to introduce "comprehensive trade secret definitions" and instead presented the jury with an enumerated list of summaries of each trade secret at issue. However, after the jury found that Boeing had misappropriated 11 of 19 Zunum trade secrets, the district court granted Boeing's motion for judgment as a matter of law, finding that Zunum failed to identify its trade secrets with "sufficient specificity" and that substantial evidence did not support the jury verdict.

In an unpublished decision in August, the Ninth Circuit reinstated the jury verdict and clarified that trade secrets must be identified at trial with "sufficient specificity," but a plaintiff "need not precisely define the boundaries of each claimed trade secret." According to the Ninth Circuit, Zunum met the "sufficient specificity" standard at trial by relying on a court-created exhibit summarizing each trade secret and presenting a basic explanation of each through witnesses as well as exhibits and demonstratives exemplifying specific trade secrets. That was enough for the jury to "meaningfully evaluate whether each alleged trade secret met the statutory definition of a protectable trade secret."

What This Means for Parties on Both Sides of the V.

Both *Quintara* and *Zunum* signal a shift in protecting plaintiffs' ability to develop their claims through discovery and illustrate the Ninth Circuit's growing reluctance to dismiss trade secret claims prematurely under the DTSA. In *Quintara*, the court reversed the district court's decision to strike trade secret claims that lacked "reasonable particularity" during discovery, emphasizing that the DTSA does not require the same early disclosure requirements as the CUTSA. Similarly, in *Zunum*, the Ninth Circuit found that Zunum had sufficiently identified its trade secrets at trial, rejecting the lower court's post-verdict dismissal. Together, these rulings affirm that trade secret disputes often hinge on nuanced, fact-driven evaluations that are best left for after discovery, not for procedural gatekeeping.

Now that the Ninth Circuit has clarified that plaintiffs are not required to apply the "sufficient particularity" standard before discovery begins in DTSA litigation, this clarification is likely to make it easier for plaintiffs to pursue trade secret claims in federal court and in California under the DTSA, while further discouraging the filing of concurrent CUTSA claims.

Additionally, if plaintiffs attempt to file the "kitchen sink" of claims, CUTSA preempts common law claims like unfair competition and breach of confidentiality. These claims are still permitted alongside a trade secret misappropriation claim under the DTSA. Further, if plaintiffs file a DTSA claim, even concurrently with a CUTSA claim in California state court, they should be prepared for the possibility of removal to federal court and associated costs. However, plaintiffs may still choose to allege

CUTSA claims if the expansive body of law and predictability to local counsel would be in their favor. Particularly, CUTSA allows plaintiffs to bring trade secret claims in California state courts without needing to prove a connection to foreign or interstate commerce, unlike the DTSA, which requires such a nexus. Plaintiffs in local disputes and smaller businesses may use this to their advantage.

On the other hand, when defending DTSA claims, it is now harder to challenge vague trade secret claims early in litigation, especially without the ability to apply CUTSA standards. Courts may still use-and defendants may still ask for-protective orders to manage discovery, but courts cannot strike DTSA claims solely because of a lack of early specificity. Consequently, judges are less likely to act as early filters for vague DTSA claims, and defendants will have to wait until after discovery is completed to challenge the sufficiency of plaintiffs' trade secret disclosures.

Other Ninth Circuit States

California is the only state in the Ninth Circuit that requires some level of trade secret identification before discovery. All other Ninth Circuit states-Washington, Oregon, Nevada, Idaho, Montana, Alaska, Hawaii and Arizona-have not adopted California's pre-discovery identification requirement. These jurisdictions follow their respective Uniform Trade Secrets Acts that do not impose procedural barriers before discovery begins. Washington courts, however, have taken a more restrictive approach to trade secret identification *during* discovery, as seen in *Modumetal v. Xtalic,*[5] in order to avoid a "fishing expedition." Yet, this was a judicially imposed condition, not a statutory mandate. Similarly, Arizona courts, as in *Smartcomm v. Palmieri,*[6] focus on substantive identification and use specificity requirements as a discovery management tool rather than a formal pre-discovery rule.

Meanwhile, Oregon, Idaho, Montana, Alaska, Hawaii and Nevada consistently rely on traditional discovery tools to manage trade secret disclosures on a case-by-case basis. There is no indication that jurisdictions outside California are moving toward adopting its procedural standards.

How Other Circuits Interpret the DTSA

Looking to other Federal Circuit Courts applying the DTSA, there is a split as to when trade secrets must be identified with "sufficient particularity." For example, in *Sysco Machinery Corp. v. DCS USA Corp.*,[7] the Fourth Circuit affirmed the dismissal of Sysco's trade secret claims, holding that DTSA claims must identify the trade secrets with "sufficient particularity" at the pleadings stage. This ruling follows the CUTSA approach.

However, other Circuits tend to follow the *Quintara* approach of leaving identification of trade secrets with "sufficient particularity" until after discovery. For instance, the Tenth Circuit in *Double Eagle Alloys, Inc. v. Hooper,*[8] held that plaintiffs must arrive at summary judgment with sufficient particularity. Further, the Second and Third Circuits in *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Group, Inc.*[9] and *Oakwood Laboratories LLC v. Thanoo*[10] follow a similar standard where sufficient particularity is a fact-specific question to be decided on a case-by-case basis after discovery.

Although most Federal Circuits agree that plaintiffs must identify trade secrets with "sufficient particularity" after discovery, the Fourth Circuit's more stringent standard could send the issue to a higher court to clearly decide at what stage in litigation this identification must occur for DTSA claims.

What's Next?

The *Quintara* and *Zunum* rulings provide some long-awaited clarity on the timing and standard of particularity for defining trade secrets under the DTSA. Under *Quintara*, it seems clear that the DTSA is more permissive than California's corresponding CUTSA in allowing plaintiffs to bring and maintain claims asserting more amorphous trade secrets. And, under *Zunum*, trade secrets need not be defined with "the boundaries precisely defined," so long as the plaintiff provides enough evidence and explanation for the jury to evaluate whether the plaintiff possessed a protectable trade secret. As explained above, plaintiffs and defendants may now need to adjust strategy when litigating trade secret misappropriation claims.

---

[1] *Quintara Biosciences Inc. v. Ruifeng Biztech, Inc.,* 149 F.4th1081 (9th Cir. 2025).

[2] *Zunum Aero Inc. v. Boeing Co.*, 2025 WL 2364602, No. 24-5212 (9th Cir. Aug. 14, 2025).

[3] *Inteliclear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d 653, 655 (9th Cir. 2020).

[4] Although the claims in *Zunum* were brought under the WUTSA, "[t]he elements of a DTSA and UTSA claim are substantially similar." *Traverse Therapy Servs., PLLC v. Sadler-Bridges Wellness Grp., PLLC,* No. C23-1239MJP, 2024 WL 381180, at *3 (W.D. Wash. Feb. 1, 2024).

[5] *Modumetal, Inc. v. Xtalic Corp.*, 4 Wash. App. 2d 810, 424 P.3d 871 (2018).

[6] *Smartcomm License Services, LLC v. Palmieri,* No. 1 CA-CV 16-0265 & 1 CA-CV 16-0281 (Ariz. Ct. App. Jan. 9, 2018) (mem. decision).

[7] *Sysco Machinery Corp. v. DCS USA Corp.,* 143 F.4th 222 (4th Cir. 2025).

[8] *Double Eagle Alloys, Inc. v. Hooper*, 134 F.4th 1078 (10th Cir. 2025).

[9] *Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Group, Inc.*, 68 F.4th 792 (2d Cir. 2023).

[10] *Oakwood Laboratories LLC v. Thanoo*, 999 F.3d 892 (3d Cir. 2021).